

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PEDRO GARCIA,

Plaintiff,

v.

WARDEN, et. al.,

Defendants.

CV F 02 6603 AWI SMS P

FINDINGS AND RECOMMENDATIONS TO
DENY MOTION & PLEA FOR ASSISTANCE
AND RELIEF FROM INTERFERENCE (Doc.
40.)

Pedro Garcia ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on January 16, 2004.

On September 22, 2004, Plaintiff filed a pleading titled "Motion & Plea for Assistance and Relief From Interference By Defendants." In this pleading, Plaintiff requests that the Court issue an Order preventing Defendants from retaliating against him for filing this action. Plaintiff states that verbal threats have been made against him and that he believes it is because he filed the instant action. The court construes Plaintiff's request as a request for preliminary injunctive relief.

The legal principles applicable to a request for preliminary injunctive relief are well

1 established. To prevail, the moving party must show either "(1) a likelihood of success on the
2 merits and the possibility of irreparable injury, or (2) the existence of serious questions going to
3 the merits and the balance of hardships tipping in [the moving party's] favor." Oakland Tribune,
4 Inc. v. Chronicle Publishing Company, Inc., 762 F.2d 1374, 1376 (9th Cir. 1985), quoting Apple
5 Computer, Inc. v. Formula International, Inc., 725 F.2d 521, 523 (9th Cir. 1984); see also
6 Hartikka v. United States, 754 F.2d 1516, 1518 (9th Cir. 1985). The two formulations represent
7 two points on a sliding scale with the focal point being the degree of irreparable injury shown.
8 Oakland Tribune, 762 F.2d at 1376. "Under either formulation of the test, plaintiff must
9 demonstrate that there exists a significant threat of irreparable injury." Id. In the absence of a
10 significant showing of irreparability, the court need not reach the issue of likelihood of success
11 on the merits. Id.

12 In this case, Plaintiff's fear of retaliation is speculative and does not does not constitute
13 irreparable harm. Goldies' Bookstore, Inc. v. Superior Court of the State of California, 739 F.2d
14 466, 472 (9th Cir. 1984).

15 In addition, the court is unable to issue any order against individuals who are not parties
16 to a suit pending before it. Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100 (1969).
17 Moreover, because the federal court is a court of limited jurisdiction, as a threshold matter, the
18 court must have before it a case or controversy. Flast v. Cohen, 392 U.S. 83, 88 (1968). Absent
19 such a case or controversy, the court has no power to hear the matter. Rivera v. Freeman, 469
20 F.2d 1159, 1162-1163 (9th Cir. 1972).

21 At present, the case has yet to be screened by the Court to determine if it states a
22 cognizable claim for relief. Until such time as the Court finds a cognizable claim and
23 Defendants have appeared in the action, Defendants are not yet parties. In addition, there can be
24 no controversy until the Court conducts its screening. Thus, the Court cannot address either the
25 likelihood of success on the merits or whether there are serious questions going to the merits of
26 Plaintiff's claims.

27 Accordingly, the Court RECOMMENDS that the Request for Relief from interference be
28 DENIED.

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2 The Court HEREBY ORDERS that these Findings and Recommendations be submitted
3 to the United States District Court Judge assigned to this action pursuant to the provisions of 28
4 U.S.C. § 636 (b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States
5 District Court, Eastern District of California. Within FIFTEEN (15) days after being served
6 with a copy of these Findings and Recommendations, any party may file written Objections with
7 the Court and serve a copy on all parties. Such a document should be captioned "Objections to
8 Magistrate Judge's Findings and Recommendations." Replies to the Objections shall be served
9 and filed within TEN (10) court days (plus three days if served by mail) after service of the
10 Objections. The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C.
11 § 636 (b)(1)(C). The parties are advised that failure to file Objections within the specified time
12 may waive the right to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153
13 (9th Cir. 1991).

14
15 IT IS SO ORDERED.

16 **Dated: August 18, 2005**
17 icido3

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE